

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSEPH TORRES,

Plaintiff,

v.

No. CIV 10-267 BB/GBW

JOE PACHECO et al.,

Defendant.

ORDER DENYING APPOINTMENT OF COUNSEL

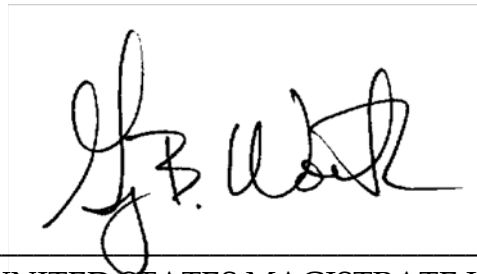
THIS MATTER comes before the Court on Plaintiff's "Motion Requesting Council (*sic*)" ("Motion"). (Motion, Sept. 20, 2011, ECF No. 28.) Having reviewed the Motion, the Court finds that it should be denied.

"There is no constitutional right to appointed counsel in a civil case. However, '[t]he court may request an attorney to represent any person unable to afford counsel.'" *Baker v. Simmons*, 65 F. App'x 231, 238 (10th Cir. 2003) (quoting 28 U.S.C. § 1915(e)(1)) (other citations omitted). "The decision to appoint counsel is left to the sound discretion of the district court." *Engberg v. Wyoming*, 265 F.3d 1109, 1122 (10th Cir. 2001). When deciding whether to grant a litigant's motion, the following factors guide the decision to appoint counsel in a civil case: "the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims." *Thomas v. Brockbank*, 195 F. App'x 804, 807 (10th Cir. 2006) (quoting *Williams v. Meese*, 926 F. 2d 994, 996 (10th Cir. 1991)). Finally, the "burden

is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel." *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004) (quoting *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985)).

In considering Plaintiff's motion for the appointment of counsel, the Court has carefully reviewed the Motion, relevant case law, and the pleadings filed in this case in light of the above-referenced factors. Within his Motion, Plaintiff makes no assertion that he has attempted to obtain counsel from legal aid or legal services organizations without payment of a fee or on a contingent fee basis. (*See* Motion, Sept. 20, 2011, ECF No. 28.) Accordingly, I find that Plaintiff has not met his burden, and the motion will be denied at this time.

Therefore, **IT IS HEREBY ORDERED** that Plaintiff's Motion, (Motion, Sept. 20, 2011, ECF No. 28), is **DENIED**.



UNITED STATES MAGISTRATE JUDGE